

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LONNIE L. JOHNSON,

Plaintiff,

v.

THE STANDARD FIRE INSURANCE  
COMPANY,

Defendant.

CASE NO. C22-5513 BHS

ORDER

This matter comes before the Court on Plaintiff Lonnie L. Johnson's Motion to Remand. Dkt. 6. Johnson contends that Defendant The Standard Fire Insurance Company did not timely file its notice of removal. However, because Standard Fire timely removed the action within 30 days of it first being able to ascertain that the amount in controversy exceeded \$75,000, the motion to remand is denied.

**I. BACKGROUND**

Johnson is a resident of Washington. Dkt. 1-9, ¶ 1. She is insured under a Standard Fire insurance policy that provides underinsured motorist ("UIM") coverage. *Id.* ¶ 3. The policy has a limit of \$100,000. *Id.*

1 Johnson sustained injuries in a motor vehicle collision. *Id.* ¶ 5. She incurred  
2 medical expenses, wage losses, and leave losses exceeding \$77,556 in total. *See id.* ¶ 6.  
3 The insurer of the at-fault party to the collision paid Johnson its policy limit of \$50,000.  
4 *Id.* ¶¶ 7–8. Johnson also submitted a UIM claim to Standard Fire, but Standard Fire did  
5 not pay. *See id.* ¶¶ 10–11.

6 Johnson sued Standard Fire in Clark County Superior Court, alleging that she and  
7 Standard Fire “dispute” the amount owed to her under the UIM policy. Dkt. 1-2, ¶ 10.  
8 Johnson sought general damages, special damages, attorneys’ fees, and costs. *Id.* at 4. On  
9 April 4, 2022, Johnson served Standard Fire with this complaint. Dkt. 7, ¶ 8.

10 On May 19, 2022, Johnson served Standard Fire with an amended complaint,  
11 alleging bad faith and violations of the Insurance Fair Conduct Act (“IFCA”), RCW  
12 48.30.015. *Id.* ¶ 9. However, the following day, Johnson’s attorney sent Standard Fire’s  
13 attorney an e-mail, which stated: “Ignore the amended complaint. We did not give proper  
14 notice, and we had the court reject the filing.” Dkt. 10-1 at 2. Johnson withdrew the  
15 amended complaint. Dkt. 7, ¶ 9.

16 On June 28, 2022, Johnson refiled the amended complaint, which again alleged  
17 bad faith and violations of IFCA. Dkt. 1-9. In addition to the damages sought in her  
18 original complaint, Johnson sought “legal fees, trebled damages, nonmonetary damages,  
19 and all remedies available under IFCA.” *Id.* at 4. On July 15, 2022, Standard Fire  
20 removed the case to federal court on the ground of diversity jurisdiction. Dkt. 1.

21 Johnson does not dispute that there is diversity of citizenship or that the amount in  
22 controversy exceeds \$75,000. Instead, she moves to remand on the basis that Standard

1 Fire did not timely remove the action. Dkt. 6 at 2. She contends that Standard Fire did not  
2 remove the action within 30 days of receiving the amended complaint on May 19, 2022.  
3 *Id.* at 3–4. Alternatively, she claims that removal was untimely because the case was  
4 removable when the original complaint was filed on March 28, 2022. *Id.* at 4–6.

5 Standard Fire responds that the action became removable on June 28, 2022—the  
6 date that Johnson refiled the amended complaint. Dkt. 9 at 7. Therefore, Standard Fire  
7 argues, it timely removed the action 17 days later on July 15. *Id.* Standard Fire also  
8 contends that the case as stated in the original complaint was not removable because it  
9 could not ascertain from that complaint that the amount in controversy exceeded \$75,000.  
10 *Id.* at 4–5.

## 11 II. DISCUSSION

12 Defendants may remove any action filed in state court over which federal district  
13 courts have original jurisdiction. 28 U.S.C. § 1441(a). The removal statute is strictly  
14 construed against removal jurisdiction. *Conrad Assocs. v. Hartford Accident & Indem.*  
15 *Co.*, 994 F. Supp. 1196, 1198 (N.D. Cal. 1998). As such, “[f]ederal jurisdiction must be  
16 rejected if there is any doubt as to the right of removal in the first instance.” *Gaus v.*  
17 *Miles*, 980 F.2d 564, 566 (9th Cir. 1992). The strong presumption against removal  
18 jurisdiction means that the party asserting federal jurisdiction has the burden of  
19 establishing that removal is proper. *Id.* As such, it bears the burden of establishing the  
20 amount in controversy by a preponderance of the evidence. *Id.* at 567.

21 Under 28 U.S.C. § 1446(b), a case may be removed under two different 30-day  
22 windows. The first requires a party to file the notice of removal within thirty days of the

1 shorter of the receipt of the initial pleading or summons. 28 U.S.C. § 1446(b)(1). “If no  
2 ground for removal is evident in the initial pleading, the second thirty-day window to  
3 remove an action commences when the defendant receives ‘an amended pleading,  
4 motion, order or other paper’ from which it can be ascertained from the face of the  
5 document that removal is proper.” *Cleveland v. W. Ridge Acad.*, No. 1:14-CV-01825-  
6 SKO, 2015 WL 164592, at \*3 (E.D. Cal. Jan. 13, 2015) (quoting 28 U.S.C. § 1446(b)(3)).

7 Johnson contends that Standard Fire did not timely remove the action within 30  
8 days of receiving the amended complaint on May 19, 2022. Dkt. 6 at 3–4. But the  
9 following day, Johnson informed Standard Fire to ignore the amended complaint because  
10 she filed it without giving proper notice. Dkt. 10-1 at 2. Johnson also withdrew the  
11 amended complaint. Dkt. 7, ¶ 9. As a result, it no longer functioned as the operative  
12 complaint, and it could not be used to support removal. *See Chavez v. JPMorgan Chase*  
13 *& Co.*, 888 F.3d 413, 414–15 (9th Cir. 2018) (“[T]he amount in controversy is  
14 determined by the complaint operative at the time of removal.”). Rather, the amended  
15 complaint did not support removal until Johnson refiled it—and Standard Fire became  
16 aware of its refiling—on June 28, 2022. *See* Dkt. 1-9. Accordingly, Standard Fire timely  
17 removed the action.

18 Johnson also asserts that Standard Fire did not timely remove the action within 30  
19 days of receiving the original complaint. Dkt. 6 at 4–6. However, whether the amount in  
20 controversy exceeded \$75,000 was not ascertainable from the original complaint. The  
21 original complaint alleged that Johnson and Standard Fire “dispute[d]” the amount owed  
22 to her under the UIM policy. Dkt. 1-2, ¶ 10. It further alleged that Johnson incurred

1 medical expenses, wage losses, and leave losses exceeding \$77,556 in total, *see id.* ¶ 6,  
2 but that the insurer of the at-fault party to the collision paid Johnson its policy limit of  
3 \$50,000. *Id.* ¶¶ 7–8. Johnson sought general damages, special damages, attorneys’ fees,  
4 and costs. *Id.* at 4. In short, what could be ascertained from the original complaint was  
5 that the amount in controversy exceeded \$27,556. This falls far short of the jurisdictional  
6 requirement.

### 7 **III. ORDER**

8 Because Standard Fire timely removed the action, removal was proper.  
9 Accordingly, Plaintiff Lonnie L. Johnson’s Motion to Remand, Dkt. 6, is **DENIED**.

10 Dated this 4th day of October, 2022.

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BENJAMIN H. SETTLE  
United States District Judge